

# SENATE BILL REPORT

## SB 5587

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As Reported By Senate Committee On:  
Judiciary, February 23, 2007

**Title:** An act relating to the judicial conduct commission.

**Brief Description:** Modifying the judicial conduct commission.

**Sponsors:** Senators Honeyford and Roach.

**Brief History:**

**Committee Activity:** Judiciary: 1/31/07, 2/23/07 [DPS].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5587 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; Carrell, Hargrove, Murray, Roach and Weinstein.

**Staff:** Lidia Mori (786-7755)

**Background:** The authority of the Commission on Judicial Conduct (CJC) to impose disciplinary action against a judge for misconduct, and the manner in which such proceedings are conducted, is substantially governed by Article IV, Section 31 of the Washington Constitution. Substitute Senate Joint Resolution No. 8202, passed by the Legislature in April of 1989, comprehensively revised Article IV, Section 31 to allow the Legislature, by law, to make the system for disciplining judges more open and accountable. The constitutional amendment generally provides for the formation of a CJC.

The CJC is authorized to investigate complaints against a judge or justice and conduct initial proceedings for the purpose of determining whether probable cause exists for conducting a public hearing to deal with the complaint. Upon beginning an initial proceeding, the Commission must notify the judge at issue of the existence and basis for the initial proceeding. Records compiled or obtained during the course of an investigation or initial proceeding involving the discipline or retirement of a judge or justice are exempt from disclosure under the public disclosure act. If the Commission concludes that probable cause exists, it will conduct a public hearing and must make public all the records of the initial proceeding that provide the basis for its conclusion. The Commission, in open session, will either dismiss the case or admonish, reprimand, or censure the judge or justice. It may also recommend to the supreme court the suspension or removal of the judge or justice or recommend the retirement of the jurist for a disability. If a judge or justice is reprimanded,

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admonished, or censured by the Commission, he or she has a right of appeal to the supreme court within 30 days.

**Summary of Bill:** A member of the CJC, or an alternate, who participates in an investigation or initial proceeding that leads to a finding of probable cause, may not participate in further proceedings, including a public hearing, on that cause.

All discovery prior to a public hearing must be conducted pursuant to the rules of civil procedure promulgated by the Washington State Supreme Court. A jurist who is subject to the Commission's proceedings is entitled to obtain discovery from the Commission, its staff, and others involved in the investigation or analysis leading to a determination of probable cause. A jurist who is the subject of a complaint and subsequent investigation by the Commission is entitled to disclosure of pleadings, papers, records, and files of the Commission unless a superior court finds, beyond a reasonable doubt, that the public interest requires non-disclosure. When the Commission makes a determination of probable cause, records of the initial investigation and initial Commission proceeding are subject to the public disclosure act.

Investigations of the Commission, including initial proceedings, public hearings, and executive sessions involving the discipline or retirement of a judge or justice, are controlled by RCW Chapter 2.64 Commission on Judicial Conduct, Article IV, section 31 of the State Constitution, and to the extent required by the State Constitution are exempt from the provisions of the open public meetings act. All members and alternates of the Commission are subject to the code of judicial conduct.

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Judiciary):** It is specified that the code of judicial conduct applies to members of the CJC to the extent that it applies to judges pro tempore. A respondent jurist is entitled to disclosure of the pleadings, papers, evidence records, and files of the Commission obtained or compiled during the course of investigation involving the discipline of a judge unless a superior court orders otherwise upon a finding based on a preponderance of the evidence that the public interest requires preventing such disclosure. A severability clause it also added.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The concern over the structure of the CJC has been ongoing for several years. They have studied the idea of a two tier structure but nothing more has come of it. The CJC operates by itself. It receives complaints about judges, it investigates the complaints, it handles the charges, it hires a prosecutor, it serves as a judge, and it determines the penalty. This bill will separate those who determine probable cause from those who decide the case. There is an Attorney General opinion that says this separation would be unconstitutional but there are other professionals who believe otherwise, as shown by the two letters submitted.

Sections 2 and 3 of this bill provide for discovery for the judge who is charged. This would only change a CJC rule. Section 4 deals with the open meetings law and Section 5 deals with the ethics rule and applies the same rules to the CJC as are applied to judges. Those commissioners are sitting as judges and should abide by the same ethics rules as a judge would follow. The way the CJC works is that complaints are filed, they are confidential, and the CJC conducts a preliminary screening. Many of the complaints are dismissed at that point. Then the CJC itself conducts an investigation and in the course of that investigation, the staff meets with the Commission members and provides information to them. If the Commission decides to go forward with the complaint, a letter is sent to the judge that says, "here are some allegations, give us a response back." Staff meanwhile give the Commission more information. The judge doesn't get any of that. If the Commission decides to go forward, they hire a lawyer and it's that lawyer who drafts the statement of charges that are going to be issued against the judge. That lawyer communicates through the staff with the Commission members. If the Commission decides to go to trial or hearing, the judge is given those documents that the Commission deems as having formed the basis of their opinion. The judge know that those who are going to sit in judgement of him or her have received information that he or she will never see.

This bill sets up, not a two tier system, but a two *panel* system because it's within the same body. One panel to determine probable cause and one to adjudicate the merits of the charges and this is consistent with the ABA model rules of judicial enforcement, rule 3.1. The second thing this bill does is give judges and the Commission the same right to pre-trial discovery as is allowed in superior court. The bill gives judges the right to know what is presented to the Commission during its initial secret stage. The bill requires the Commission and alternates to conform to the same ethical prerequisites that they purport to enforce.

CON: The Supreme Court has de novo review of any discipline levied against a judge and the Commission itself does not have authority to impose suspension or removal. The CJC can only recommend it. 96 percent of the complaints that are brought to the Commission are disposed of in the confidential portion of the proceedings. The Commission is extremely mindful of the damage that baseless complaints can do to the reputation of a judge, either that individual judge or the judiciary as a whole. The composition of the Commission is such that, with lay people, lawyers, and judges, it has an informed membership with many different perspectives. Necessarily, in the process, the judge has more than one opportunity to address and explain to the Commission his or her point of view before the matter is ever brought public.

**Persons Testifying:** PRO: Senator Honeyford, prime sponsor; Kurt Bulmer, attorney; Justice Richard Sanders.

CON: Reiko Callner, CJC.